

## **201 KAR 1:300. Rules of professional conduct.**

RELATES TO: KRS 325.240, 325.340

STATUTORY AUTHORITY: KRS 325.240

NECESSITY, FUNCTION, AND CONFORMITY: Pursuant to KRS 325.240, the Kentucky State Board of Accountancy may promulgate rules of professional conduct. This administrative regulation is necessary to establish the Kentucky State Board of Accountancy Rules of Professional Conduct that are patterned after the Code of Professional Conduct adopted by the American Institute of Certified Public Accountants (AICPA). The function of this administrative regulation is to adopt appropriate rules of professional conduct to establish and maintain a high standard of integrity and dignity in the public accounting profession. The State Board of Accountancy may review the AICPA's interpretations of its code of professional conduct for guidance when applying the provisions of this administrative regulation.

Section 1. Definitions. (1) "AICPA" means the American Institute of Certified Public Accountants.

(2) "Audit" means an examination of financial statements of an entity in accordance with standards promulgated by the American Institute of Certified Public Accountants (AICPA), including generally accepted auditing standards (GAAS) and upon which an opinion is expressed or disclaimed regarding whether the financial statements conform to generally accepted accounting principles (GAAP) or other comprehensive basis of accounting.

(3) "Board" is defined in KRS 325.220(1).

(4) "Client" means a person or entity which retains a licensee to provide public accounting services.

(5) "Commission" means any item of value given or received by a licensee to or from any third party in return for suggesting the purchase of any product or service.

(6) "Compilation" means presenting in the form of financial statements information that is the representation of management or owners without undertaking to express any assurance on the statements.

(7) "Contingent fee" means a fee established for the performance of any public accounting service pursuant to a written or oral agreement in which no fee will be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of the service.

(8) "Financial statement" means a presentation of financial data, including accompanying notes, derived from accounting records and intended to communicate an entity's economic resources and obligations at a point in time, or the changes therein for a period of time, in accordance with generally accepted accounting principles (GAAP) or a comprehensive basis of accounting other than generally accepted accounting principles (GAAP).

(a) General use financial statements, financial forecasts, projections and similar presentations are considered financial statements.

(b) Financial presentations included in tax returns are not financial statements.

(9) "Generally accepted accounting principles (GAAP)" means the conventions, rules, and procedures which describe accepted accounting practices at a particular time and include broad guidelines of general applications and detailed practices and procedures that provide a standard by which to measure financial presentations.

(10) "Review" means performing inquiry and analytical procedures that provide the licensee with a reasonable basis for expressing limited assurance that there are no material modifications that should be made to the financial statements for them to be in conformity with generally accepted accounting principles (GAAP) or, if applicable, with another comprehensive basis of accounting.

Section 2. Independence. (1) A licensee or a firm shall not express an opinion on financial statements of an entity unless he and the firm are independent with respect to the entity.

(2) Prior to expressing an opinion on financial statements, the licensee shall assess his relationship with the entity to determine whether his opinion will be considered independent, objective and unbiased by a third party having knowledge of all facts referring to the relationship between the licensee and the entity.

(3) A licensee shall not be considered to be independent if during the period:

(a) Of the engagement or at the time of expressing his opinion, the licensee or his firm:

1. Had or was committed to acquire any direct or material indirect financial interest in the entity;

2. Was a trustee of any trust or executor or administrator of any estate if the trust or estate had or was committed to acquire any direct or material indirect financial interest in the entity;

3. Had any joint, closely held business investment with the entity or any officer, director or principal stockholder which was material in relation to the licensee's or his firm's net worth;

4. Had any loan to or from the entity or to or from any officer, director or principal stockholder of the entity.

(b) Covered by the financial statements, the period of the professional engagement or at the time of expressing an opinion, the licensee or his firm served as a:

1. Promoter, underwriter, voting trustee, director, officer or in any capacity equivalent to that of a member of management or an employee of the entity; or

2. Trustee for a pension or profit sharing trust of the entity.

(4) The restriction found in subsection (3)(a)4 of this section shall not apply to the following loans obtained from a financial institution prior to January 1, 1992, which are current as to all terms of the loan, were made under normal lending procedures, terms and requirements, and have not been renegotiated:

(a) Loans obtained by a licensee or his firm which are not material in relation to the net worth of the borrower;

(b) Home mortgages; and

(c) Other secured loans, except loans guaranteed by a licensee's firm which are otherwise unsecured.

Section 3. Integrity and Objectivity. A licensee engaged in the practice of public accounting shall maintain objectivity, integrity, and be free of conflicts of interest. The licensee shall not subordinate his judgment to others.

Section 4. Competence. A licensee or a firm engaged in the practice of public accounting shall:

(1) Perform, or offer to perform, only those professional services that he or his firm may reasonably expect to complete with professional competence;

(2) Exercise due professional care in the performance of professional services;

(3) Adequately plan and supervise the performance of professional services; and

(4) Obtain sufficient relevant data to afford a reasonable basis for conclusions or recommendations in relation to any professional services performed.

Section 5. Standards of Practice. When performing an audit, review, compilation, or any other professional service within the practice of public accounting, the licensee and his firm shall comply with the following appropriate practice standards and all revisions promulgated after these dates:

(1) Generally accepted auditing standards (GAAS) as reflected in the following documents:

(a) "AICPA Professional Standards", Volume 1, U.S. Auditing Standards, Section AU, as of June 1, 2001;

(b) Government Auditing Standards, "Yellow Book", General Accounting Office, 1994 revision;

(c) "Interpretation of Continuing Education and Training Requirements", Government Auditing Standards, General Accounting Office, April, 1991; and

(2) Other applicable standards:

(a) "AICPA Professional Standards", Volume 1, Attestation Engagements, Section AT, as of June 1, 2001;

(b) "AICPA Professional Standards", Volume 2, Accounting and Review Services, Section AR, as of June 1, 2001;

(c) "AICPA Professional Standards", Volume 2, Consulting Services, Section CS, as of June 1, 2001;

(d) "AICPA Professional Standards", Volume 2, Tax Practice, Section TX, as of June 1, 2001;

(e) "AICPA Professional Standards", Volume 2, Quality Control, Section QC, as of June 1, 2001;  
or

(f) "AICPA Professional Standards", Volume 2, Personal Financial Planning, Section PFP, as of June 1, 2001.

Section 6. Accounting Principles. (1) A licensee who is aware that the financial statement or financial data of any entity contains a departure from GAAP that has a material effect on the financial statement or financial data taken as a whole shall not:

(a) Express an opinion or state affirmatively that the financial statement or financial data are presented in conformity with GAAP or another comprehensive basis of accounting; or

(b) State that he is unaware of any material modifications that should be made to the statements in order for them to be in conformity with GAAP.

(2) Notwithstanding subsection (1) of this section, financial statements may depart from GAAP, if the licensee:

(a) Demonstrates that due to unusual circumstances the financial statements or data would otherwise have been misleading;

(b) Describes the departure;

(c) States the approximate effects, if practicable; and

(d) Explains the reasons why compliance with GAAP would result in a misleading statement.

(3) GAAP is established by principles, practices, or guidance provided in statements, interpretations, bulletins, guides, and other documents identified in "AICPA Professional Standards", Volume 1, U.S. Auditing Standards, Section AU 411, as of June 1, 2001.

Section 7. Confidential Client Information. A licensee shall comply with the requirements of KRS 325.440 relating to the disclosure of confidential client information.

Section 8. Client Records. (1) A licensee shall comply with the requirements of KRS 325.420 relating to the ownership of accountant's working papers - client records.

(2) The licensee shall not have a lien on these accounting or other records.

Section 9. Advertising and Other Forms of Solicitation. A licensee shall not seek to obtain clients by:

(1) Advertising or other forms of solicitation that are false, misleading, or deceptive; or

(2) The use of coercion, overreaching or harassing conduct.

Section 10. Commissions. (1) A licensee shall not recommend or refer to a client any product or service in exchange for a commission, recommend any product or service to be supplied by his client to a third party, or receive a commission when the licensee or the licensee's firm also performs for that client:

- (a) An audit or review of a financial statement;
  - (b) A compilation of a financial statement when the licensee expects or reasonably might expect that a third party will use the financial statement and the licensee's report does not disclose a lack of independence; or
  - (c) An examination of prospective financial information.
- (2) The prohibition of subsection (1) of this section applies during the period in which the licensee is engaged to perform any of the services listed in subsection (1)(a), (b), and (c) of this section and the period covered by any historical financial statements involved in the listed services.
- (3) A licensee who is not prohibited from receiving a commission and who is paid or expects to be paid a commission shall disclose that fact in writing to any person or entity to whom the licensee recommends or refers a product or service to which the commission relates.
- (4) A licensee who accepts a fee for recommending or referring any service of another licensee to any person or entity or who pays a fee to obtain a client shall disclose the receipt or payment of the fee to the client.
- (5) This rule shall not prohibit:
- (a) Payments for the purchase of an accounting practice; or
  - (b) Retirement payments to individuals, and their heirs or estates, who were formerly engaged in the practice of public accounting.

Section 11. Contingent Fees. (1) A licensee shall not accept or perform any public accounting services for a contingent fee or receive a contingent fee from a client for whom the licensee or the licensee's firm performs:

- (a) An audit;
  - (b) A review;
  - (c) A compilation of a financial statement when the licensee expects or reasonably might expect that a third party will use the financial statement and the licensee's report does not disclose a lack of independence; or
  - (d) An examination of prospective financial information.
- (2) The prohibition of subsection (1) of this section applies during the period of time in which the licensee is engaged to perform those services and the period covered by any historical financial statements involved in those services.
- (3) A licensee in public practice shall not prepare for a contingent fee:
- (a) An original or amended tax return or claim for a tax refund. Preparation of an original or amended tax return or claim for tax refund includes giving advice on events which have occurred at the time the advice is given if that advice is directly relevant to determining the existence, character, or amount of a schedule, entry, or other portion of a return or claim for refund; or
  - (b) An amended federal or state income tax return for a client claiming a refund of taxes because a deduction was inadvertently omitted from the return originally filed when there is no question as to the propriety of the deduction, rather the claim is filed to correct an omission.
- (4) The following are examples of circumstances where a contingent fee would be permitted regardless of whether the licensee or licensee's firm is performing the services specified in subsection (1) of this section:
- (a) Representing a client in an examination by a revenue agent of the client's federal or state income tax return;
  - (b) Filing an amended federal or state income tax return claiming a tax refund based on a tax issue that is either the subject of a test case by a different taxpayer or with respect to which the taxing authority is developing a position;
  - (c) Filing an amended federal or state income tax return or refund claim which claims a tax refund in an amount greater than the threshold for review by the Joint Committee on Internal Revenue Tax-

ation (\$1,000,000 at March, 1991) or state taxing authority;

(d) Requesting a refund of either overpayments of interest or penalties charged to a client's account or deposits of taxes improperly accounted for by the federal or state taxing authority in circumstances where the taxing authority has established procedures for the substantive review of such refund requests;

(e) Requesting, by means of protest or similar document, consideration by the state or local taxing authority of a reduction in the assessed value of property under an established taxing authority review process for hearing all taxpayer arguments relating to assessed value; or

(f) Representing a client to obtain a private letter ruling or influencing the drafting of an administrative regulation or statute.

(5) Fees shall not be considered as contingent:

(a) If fixed by courts or other public authorities; or

(b) In tax matters if determined based on the results of judicial proceedings or the findings of governmental agencies. A fee is considered determined based on the findings of governmental agencies, if the licensee can demonstrate a reasonable expectation at the time of the fee arrangement, of substantive consideration by an agency with respect to the licensee's client. The expectation is deemed not reasonable in the case of preparation of original tax returns.

(6) Fees may vary depending on the complexity of services rendered.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "AICPA Professional Standards", Volume 1, U.S. Auditing Standards, Section AU, as of June 1, 2001;

(b) Government Auditing Standards, "Yellow Book", General Accounting Office, 1994 revision;

(c) "Interpretation of Continuing Education and Training Requirements", Government Auditing Standards, General Accounting Office, April, 1991;

(d) "AICPA Professional Standards", Volume 1, Attestation Engagements, Section AT, as of June 1, 2001;

(e) "AICPA Professional Standards", Volume 2, Accounting and Review Services, Section AR, as of June 1, 2001;

(f) "AICPA Professional Standards", Volume 2, Consulting Services, Section CS, as of June 1, 2001;

(g) "AICPA Professional Standards", Volume 2, Tax Practice, Section TX, as of June 1, 2001;

(h) "AICPA Professional Standards", Volume 2, Quality Control, Section QC, as of June 1, 2001;

(i) "AICPA Professional Standards", Volume 2, Personal Financial Planning, Section PFP, as of June 1, 2001; and

(j) "GAAP" as established in "AICPA Professional Standards", Volume 1, U.S. Auditing Standards, Section AU 411, as of June 1, 2001.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. (20 Ky.R. 668; eff. 10-8-93; Am. 21 Ky.R. 3061; 22 Ky.R. 275; eff. 8-10-95; 24 Ky.R. 2406; eff. 7-13-98; 28 Ky.R. 1674; 2190; eff. 4-15-2002.)